

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1155

Amending Appellate
Rules 203, 204,
209, 210, 212, 215,
216, 217, 218, 219,
502, 508, 513.5,
604, 605, and 608
and providing for
an effective date.

IT IS ORDERED:

1. Appellate Rule 203 is amended to provide:

The supervision and control of the proceedings on appeal is in the appellate court from the time the notice of appeal is filed with the clerk of the appellate courts, except as otherwise provided in these rules. The appellate court may at any time entertain a motion to dismiss the appeal, or for directions to the trial court, or to modify or vacate any order made by the trial court in relation to the prosecution of the appeal, including any order fixing or denying bail.

2. Appellate Rule 204 is amended to provide:

(a) **When Taken--Appeals and Cross-Appeals.**

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*(5) Effect of Taxing of Costs and
Prejudgment Interest and Awarding of
Attorney's Fees.*

[a] The running of the time for filing an appeal is not terminated by proceedings related to the taxing of costs pursuant to Civil Rule 79 or while awaiting calculation of prejudgment interest or proceedings related to the award of attorney's fees. However, the statement of points on appeal filed pursuant to Appellate Rule 204(e) and the designation of transcript filed pursuant to Appellate Rule 210(b)(1) may be amended by motion by an appellant or cross-appellant to include the award or denial of costs and attorney's fees or prejudgment interest and pertinent portions of the electronic record. These subjects will thereafter be considered part of the appeal if covered in the brief of appellant or cross-appellant. If no appeal or cross-appeal is pending, the allowance of costs and attorney's fees or the award of prejudgment interest shall be considered a final judgment subject to separate appeal limited to the subject of costs, attorney's fees or prejudgment interest.

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(b) **Appeal--How Taken.** A party may appeal from a final order or judgment by filing a notice of appeal with the clerk of the appellate courts. The notice of appeal must identify the party taking the appeal, the final order or judgment appealed from, and the court to which the appeal is taken. The notice of appeal must be accompanied by

[1] a completed docketing statement in the form prescribed by these rules;

[2] a copy of the final order or judgment from which the appeal is taken;

[3] a statement of points on appeal as required by Rule 204(e);

[4] unless the party is represented by court-appointed counsel or the party is the state or an agency thereof,

[a] the filing fee required by Administrative Rule 9(a);

[b] a motion for waiver of filing fee pursuant to Administrative Rule 9(f)(1); or

[c] a motion to appeal at public expense pursuant to Rule 209;

[5] unless the party is represented by court-appointed counsel, the party is the state, municipality, or officer or agency thereof, or the party is an employee appealing denial of compensation by the Alaska Workers' Compensation Board or denial of benefits under AS 23.20 (Employment Security Act),

[a] the cost bond or deposit required by Rule 204(c)(1);

[b] a copy of a superior court order approving the party's supersedeas bond or other security in lieu of bond or a copy of the party's motion to the superior court for approval of a supersedeas bond or other security;

[c] a motion for waiver of cost bond;
or

[d] a motion to appeal at public expense pursuant to Rule 209;

[6] a designation of transcript if the party intends to have

portions of the electronic record transcribed pursuant to Rule 210(b); and

[7] proof of service of the notice of appeal and all required accompanying documents, except the filing fee, on

[a] the clerk of the trial court which entered the judgment or order being appealed; and

[b] all other parties to the trial court action.

A party may move for an extension of time to file the docketing statement, the statement of points on appeal, and the designation of transcript. The clerk of the appellate courts shall refuse to accept for filing any notice of appeal not conforming to this paragraph and accompanied by the items specified in [1]-[7] or a motion to extend the time for filing item [1], [3], or [6].

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(e) **Statement of Points.** At the time of filing the notice of appeal, the appellant shall serve and file a concise statement of the points on which appellant intends to rely in the appeal. The appellate court will

con-sider only points included in the statement, and points that the court can address effectively without reviewing untranscribed portions of the electronic record. On motion in the appellate court, and for cause, the statement of points may be supplemented.

(f) **Judgment Against Surety.** By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits himself to the jurisdiction of the superior court and irrevocably appoints the clerk of that court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the superior court prescribed may be served on the clerk of the superior court who shall forthwith mail copies to the surety if his address is known.

(g) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order of a court and their interests are such as to make joinder practical, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they

may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party.

3. Appellate Rule 209 is amended to provide:

(a) **Civil Matters.**

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(3) If the motion is granted:

[a] The party may proceed without further application to the supreme court;

[b] The superior court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

[1] Filing fees,

[2] Transcript fees,

[3] Costs of printing briefs,

[4] Other costs;

[c] Any costs and attorney fees awarded to the appellant or petitioner as a

prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

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(b) **Criminal Matters.**

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(6) Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. An attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that either the public defender agency or the office of public advocacy is able to represent defendant on appeal. If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204 have been accepted for filing by the clerk of the appellate courts.

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4. Appellate Rule 210 is rescinded and repromulgated as follows:

Rule 210. Record on Appeal.

(a) **Composition of Record.** The record on appeal consists of the entire superior court file, including the original papers and exhibits filed in the superior court, and the electronic record of proceedings before the superior court.

(b) **Preparation of Transcript.**

(1) *Designation of Parts of Record to be Transcribed.*

(A) At the time the notice of appeal is filed, the appellant shall file and serve on the other parties to the appeal a designation of the parts of the electronic record which appellant intends to transcribe. The appellant shall designate all parts which are essential to a determination of the issues on appeal. Within 10 days after service of appellant's designation, any other party to the appeal may file and serve a designation of

additional parts of the electronic record to be transcribed.

(B) If a party designates an entire trial or hearing, the party's designation shall include only the nature and dates of the proceeding. If a party designates parts of a trial or hearing, the party's designation shall include the nature and dates of the proceeding, the tape and log numbers where these parts appear, and a narrative description of the portions requested. If a party designates a portion of a witness' testimony, it must appear from the party's narrative description that part of the witness' testimony has been omitted.

(2) *Preparation at Public Expense.* The clerk of the trial courts shall arrange for preparation of the transcript in cases in which the transcript is prepared at public expense. The transcript shall include all parts of the electronic record designated by the parties to the appeal; however, the voir dire examination of jurors and jury instructions shall not be transcribed unless a party has specifically requested these portions of the trial.

(3) *Preparation Not at Public Expense.* In cases in which the transcript is not

prepared at public expense, the appellant shall contract with an authorized transcriber for preparation of a transcript of all parts of the electronic record designated by the parties to the appeal. Upon request, the clerk of the trial courts shall provide to the transcriber a copy of the designations, a copy of the electronic record or parts thereof, a copy of the log notes and other information necessary for preparation of the transcript.

(4) *Time for Completion.* Preparation of the transcript shall be completed within 40 days after filing of the notice of appeal. If the transcript is not being prepared at public expense and the transcriber is unable to complete the transcript within this time, the appellant shall move the appellate court for an extension of time. The motion shall comply with Appellate Rule 503, shall also be served on the clerk of the trial courts, and shall be considered a routine motion within the meaning of Rule 503(b).

(5) *Filing and Distribution.* Upon completion of the transcript, the transcriber shall promptly notify the parties that the transcript has been completed and shall file with the clerk of the trial courts (i) the original and one

copy of the transcript; and (ii) an electronic version of the transcript in the form and format prescribed by administrative bulletin.

(6) *Costs.* If the transcript is not being prepared at public expense, the cost of preparing the original transcript, the copy filed with the court and the computer diskette shall be paid by the appellant. This cost may be taxed as a cost in the case, but if any party causes parts of the electronic record to be transcribed unnecessarily, the court may impose the cost of transcribing such parts on that party.

(7) *Form of Transcript.* Transcripts shall be in the form and format prescribed by administrative bulletin.

(8) *Statement in Lieu of Transcript.* In the event no stenographic report or electronic recording of the evidence or proceedings at a hearing or trial was made, the appellant may prepare a statement of the evidence of proceedings from the best available means, including the appellant's recollection, for use instead of a stenographic or electronically recorded transcript. This statement shall be served

on the appellee, who may serve objections or proposed amendments, and shall be submitted to the court from which the appeal is being taken for settlement and approval. As settled and approved, the statement shall be filed with the clerk of that court and transmitted to the appellate court in lieu of a transcript.

(c) **Excerpt of Record.**

(1) *Duty to Prepare.* (A) Each party shall file and serve an excerpt of record with the party's brief, unless the parties have waived the preparation of excerpts pursuant to paragraph (d).

(B) In cases involving multiple appellants or appellees, each side shall prepare a single excerpt of record. In a case involving multiple appellants who are filing separate briefs, the appellant who filed the first notice of appeal shall prepare and file the excerpt for the appellants, unless the appellants otherwise agree. In a case involving multiple appellees who are filing separate briefs, the appellees shall decide among themselves which appellee shall prepare and file the excerpt for the appellees. Ten days prior to the date on which a side's briefs are due,

the parties who are not responsible for preparation of the excerpt shall transmit to the responsible party a list of documents to be included in the excerpt. The responsible party shall include in the excerpt all documents which are specified by the other parties, provided such documents are in the record. A party who fails to transmit a list of documents to the responsible party by the 10 day deadline waives the right to designate documents for inclusion in the excerpt. The responsible party shall mail a copy of the excerpt to each of the other parties on that side six days before the date the briefs are due, or deliver a copy of the excerpt three days before the date the briefs are due, so that the other parties may include the appropriate citations in their briefs. The cost of copying and mailing the excerpt shall be borne equally by all parties on the side.

(C) A cross-appellant or cross-appellee who elects to file a single brief shall file a single excerpt with that brief. A cross-appellant who makes this election shall include in the excerpt those documents that are properly included in an appellee's excerpt under Rule 210(c)(2). A cross-appellant who elects to file separate briefs shall file and serve notice of this election

within 10 days after service of the notice of the due date for appellant's brief. If a cross-appellant makes this election, the cross-appellant and the appellant shall be treated as co-appellants filing separate briefs and shall prepare and submit a combined excerpt as required by Rule 210(c)(1)(B). The cross-appellee and the appellee shall be treated as co-appellees filing separate briefs for purposes of that rule.

(2) *Contents.* The appellant's excerpt of record shall contain a true and correct copy of (i) all charging documents, or the petition or complaint, counterclaim, crossclaim and answer setting out the issues to be tried; (ii) the judgment or interlocutory order from which the appeal is taken; (iii) other orders or rulings sought to be reviewed; (iv) supporting opinions, findings of fact, conclusions of law or other statements showing the reasoning of the trial court; and (v) specific portions of other documents in the record that are both cited in appellant's brief and essential to the resolution of an issue on appeal. The appellee's excerpt of record shall contain a copy of those parts of the record relied on by appellee which were not included in the appellant's excerpt. Pages

of the transcript should not be included in the excerpts and, except where they have independent relevance, memoranda of law in the trial court should not be included in the excerpts. The fact that parts of the record are not included in the excerpts shall not prevent the parties or the appellate court from relying on such parts.

(3) *Supplemental Excerpts.* Appellant may file and serve a supplemental excerpt of record with appellant's reply brief or within the time specified for filing a reply brief. No other supplemental excerpt may be filed except by leave of the appellate court granted on motion, or at the request of the appellate court. A supplemental excerpt may not include parts of the record which appear in another excerpt filed in the appeal.

(4) *Form, Filing and Service.* Each party's excerpt of record shall be bound separately from the party's brief and shall contain a table of contents at the beginning of the first volume. The excerpt and the table of contents shall be in the form specified in the Clerk's Instructions for Preparation of Excerpts published in these rules. Six copies of the excerpt shall be filed with the brief, and one copy shall be served on counsel for each party separately

represented, unless the appellate court directs the filing or service of a lesser number.

(5) *Excerpts to be Abbreviated.* The parties shall include in the excerpts only those parts of the record which are essential to a determination of the questions presented on appeal. For any infraction of this rule, the appellate court may impose sanctions and withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require.

(6) *Costs.* Subject to subparagraph 210(c)(5), the prevailing party shall be entitled to recover the cost of copying its excerpt of record under Appellate Rule 508(d).

(d) **Waiver of Excerpts.** The parties may agree to waive the preparation of excerpts of record required under paragraph (c). The agreement must be signed by all parties participating in the appeal and must be filed with the clerk of the appellate courts within 20 days after filing of the notice of appeal.

(e) Preparation of the Trial Court File.

(1) *Page Numbering.* Upon receiving the notice of appeal, the clerk of the trial courts shall number the pages of the trial court file in a single consecutive sequence throughout all volumes. Page numbering must be completed within 40 days after filing of the notice of appeal.

(2) *Confidential Materials.* Papers filed under seal in the trial court and exhibits submitted or introduced at closed hearings in the trial court shall be maintained under seal while they constitute part of a record on appeal, and access to them shall be governed by Rule 512.5(c).

(f) Briefing Schedule. Upon filing of the transcript and completion of the page numbering, the clerk of the trial courts shall notify the clerk of the appellate courts that the case is ready for briefing. Upon receiving this notice, the clerk of the appellate courts shall give notice of the due date for the appellant's brief.

(g) Transmission of the Record. (1)
Transmission to Appellate Court. Upon

notification that briefing is complete, the clerk of the trial courts shall transmit the record, excluding physical exhibits, to the clerk of the appellate courts. Physical exhibits shall be retained by the trial court unless specifically requested by the appellate court. As used in this paragraph, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of unusually large size or unusual bulk or weight.

(2) *Transfer to Other Court Locations.* The clerk of the appellate courts may direct that the record be temporarily transferred to another court location within the state for the accommodation of counsel in the preparation of briefs.

(h) **Several Appeals.** When more than one appeal is taken to the appellate court from the same judgment, there shall be a single record on appeal. In preparing the record, deadlines which run from filing of the notice of appeal shall run from filing of the last notice of appeal.

(i) **Power of Court to Correct, Modify or Supplement.** It is not necessary for the record on appeal to be approved by the trial

court or a judge thereof except as provided in subparagraph (b)(8) and in Rule 211, but if any difference arises whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to that court's decision. If anything material to either party is omitted from the record on appeal by error or accident by court personnel, or is misstated therein, the parties by stipulation, the trial court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected. All other questions as to the content and form of the record shall be presented to the appellate court. On motion in the appellate court, and for cause, an excerpt of record may be modified or supplemented to correct omissions by counsel.

5. Appellate Rule 212 is amended to provide:

(a) **Filing and Serving Briefs.**

(1) *Time for Serving and Filing Briefs.*
The appellant shall serve and file the appellant's brief within 30 days after service of the notice of the due date for appellant's brief, issued pursuant to Rule

210(f). The appellee shall serve and file the appellee's brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 20 days after service of the brief of the appellee. In cases involving multiple appellants or appellees who are filing separate briefs, including parties who are deemed to be co-parties under Rule 210(c)(1)(C), the time for filing these briefs shall be extended by 10 days if the parties are preparing excerpts of record in order to allow compliance with Rule 210(c)(1)(B). At the time a brief is filed with the appellate court, it must be accompanied by proof of service on all parties.

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(c) Substantive Requirements.

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(8) *References in Briefs to the Record.*

[a] *References in Cases in Which Excerpts are Prepared.* References in the briefs to parts of the record reproduced in an excerpt shall be to the pages of the

excerpt at which those parts appear. The form for references to pages of the excerpt is [Exc. ____]. Briefs may reference parts of the record not reproduced in an excerpt. The form for references to pages of the transcript is [Tr. ____] and to pages of the trial court file is [R. ____].

[b] *References in Cases in Which Excerpts are Waived.* If the preparation of excerpts has been waived, the briefs shall refer to specific pages of the transcript or the trial court file. The form for references to pages to the transcript is [Tr. ____] and to pages of the trial court file is [R. ____].

[c] *References to be Included.* If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected. Appellant's brief shall indicate the pages of the record where each point on appeal was raised in the trial court. If the point on appeal was not raised in the trial court, the brief shall explain why the point is raised for the first time on appeal. Failure to comply with the requirements of this

paragraph may result in return of the brief as provided in paragraph 11 of this subdivision.

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6. Appellate Rule 215 is amended to provide:

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(b) **Notice of Appeal.** A notice of appeal from a sentence only shall be filed with the clerk of the appellate courts not later than 30 days after the date shown in the clerk's certificate of distribution on the written judgment, except as provided for in Appellate Rule 204(a)(4). The notice of appeal need only state that the sentence which is being appealed is too lenient or excessive. When filed, the notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1], [2], [4], and [7].

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(e) **Record on Appeal.**

(1) *Preparation and Contents.* Within 15 days after the filing of a notice of

sentence appeal, the clerk of the trial court shall prepare sufficient copies of the record on appeal, which shall consist of the following:

[a] all charging documents;

[b] the judgment being appealed;

[c] a transcript of the entire sentencing proceeding; and

[d] all reports, documents, motions and memoranda pertaining to sentencing which were available to the sentencing court.

The clerk shall number the pages of the record consecutively. Appellate Rule 210(c) shall not apply.

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(f) **Memoranda on Appeal.**

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(g) **Disposition of Appeals by Reviewing Court.** Sentence appeals will be disposed of by the appellate court on the record. Oral argument, if timely requested no later than

ten days after the date on which the appellee's sentence memorandum is due, is limited to fifteen minutes per side, unless otherwise ordered by the court of appeals. The order of argument is as provided in Rule 213(b). In cases where sentence appeals are consolidated with appeals on the merits, a timely request for argument on the merits in accordance with Rule 213(a) or Rule 217(h) is deemed to include a request for argument on the sentence appeal.

(h) **Bail Pending Appeal.** A sentence appealed on the sole ground that the sentence is excessive does not confer or enlarge the right to bail pending appeal.

(i) **Consolidation of Sentence Appeals with Regular Appeals.** An appeal of a sentence on the ground that the sentence is excessive or too lenient shall be consolidated with an appeal by the same party based upon other grounds. Upon consolidation, the procedure for perfecting an appeal on other grounds shall govern.

7. Appellate Rule 216 is amended to provide:

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(d) **Notice of Appeal.**

(1) A notice of appeal under this rule shall be filed with the clerk of the appellate courts within 10 days after the date shown in the clerk's certificate of distribution on the order or judgment. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[4] and [7].

(2) The notice must indicate that the appeal is being filed pursuant to this rule, but the court of appeals will apply this rule to cases within its scope whether they are so identified or not.

(e) **Record on Appeal.** The entire superior court file shall serve as the record on appeal, together with a cassette tape recording of any hearing held in superior court if deemed necessary by the court of appeals. The papers in the record on appeal need not be numbered at the bottom consecutively. Promptly upon the filing of the appellee's memorandum, the clerk of the trial courts shall transmit the original and copies of the record to the clerk of the appellate courts in the same manner as for other appeals. Appellate Rule 210(c) shall not apply.

(f) **Memoranda on Appeal.**

. . .

(g) **Disposition of Appeals.** Appeals under this rule will be disposed of expeditiously by the court of appeals on the record and memoranda. Oral argument, if timely requested no later than ten days after the date on which the appellee's memorandum is due, will be scheduled on an expedited basis. The order and length of oral argument is as provided in Rule 213(b) and Rule 505(e).

8. Appellate Rule 217 is amended to provide:

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(b) The notice of appeal shall be filed with the clerk of the appellate courts within 15 days after the date shown in the clerk's certificate of distribution on the judgment being appealed. The provisions of Appellate Rule 204(a)(4) shall apply to appeals from the district court. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[4], [6], and [7].

(c) Unless otherwise ordered by the court of appeals, the record on appeal shall consist of the entire district court file, together with cassette recordings of those proceedings designated pursuant to Rule 210(b). Written transcripts may not be prepared except by order of the court of appeals. The papers in the record on appeal need not be numbered at the bottom consecutively. The clerk of the trial courts shall complete the preparation of the record on appeal within fifteen days from the date of filing the notice of appeal. Appellate Rule 210(c) shall not apply.

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9. Appellate Rule 218 is amended to provide:

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(d) **Notice of Appeal and Cross Appeal.**

The notice of appeal in an appeal under this rule shall be filed with the clerk of the appellate courts within 15 days after the date shown in the clerk's certificate of distribution on the order or judgment. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[7]. The notice must indicate that the appeal is being filed pursuant to this rule,

but the supreme court will apply this rule to cases within its scope whether they are so identified or not. A notice of cross appeal may be filed within 14 days after the notice of appeal is filed.

(e) **Time for Completion of Record.** Rule 210 shall apply except that the time for completion of the transcript and page numbering shall be within 30 days after filing of the notice of appeal.

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10. Appellate Rule 219 is amended to provide:

. . .

(c) **Notice of Appeal.** The notice of appeal under this rule shall be filed with the clerk of the appellate courts within 15 days after the date shown in the clerk's certificate of distribution on the order or judgment. The notice shall identify the appeal as an appeal under this rule, but the court of appeals will apply this rule to cases within its scope whether they are so identified or not. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[4], [6], and [7].

(d) **Time for Completion of Record.** Rule 210 shall apply except that the time for completion of the transcript, if ordered, and page numbering shall be within 30 days after filing the notice of appeal. The clerk of the trial courts shall take such steps as may be necessary to insure timely completion of records in cases under this rule, including but not limited to giving the preparation of transcripts in cases under this rule priority over the preparation of transcripts in criminal cases. However, unless otherwise ordered by the Court of Appeals, the record of the trial court proceeding will consist of cassette recordings rather than transcripts. Written transcripts may not be prepared except by order of the Court of Appeals.

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11. Appellate Rule 502(d) is rescinded and repromulgated as follows:

(d) **Mailing of Papers for Filing.**
Papers may be filed either by delivering them to the office of the clerk of the appellate courts in Anchorage, Fairbanks, or Juneau or by mailing them to: Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501. The date of mailing, as shown

by the postmark or other proof from the post office, will be deemed to be the date of filing. A postmark date from a privately owned postage meter will not suffice as proof of the date of mailing and papers postmarked in this manner will be deemed filed on the date of receipt by the clerk.

12. Appellate Rule 508(d) is amended to provide:

(d) **Costs to be Awarded.** When costs are awarded in the appellate court, they shall include, unless the court otherwise orders and subject to Rules 210(b)(6) and (c)(6), the filing fee, the costs of preparing the transcript, premiums for any bond under Rule 204(c) or 204(d), and the costs of duplicating and mailing briefs and excerpts of record. Duplicating costs will not be awarded in excess of the rate generally charged by printers in the city in which counsel is located.

13. Appellate Rule 513.5(a) is amended to provide:

(a) **Scope.** This rule governs the form of all papers filed in the appellate courts except briefs (which are governed by Rule 212(b)), transcripts (which are governed by Rule 210(b)), and excerpts of record (which are governed by Rule 210(c)).

14. Appellate Rule 604 is amended to provide:

(a) **Appeals from District Court.**

(1) *Record on Appeal.*

(A) The record on appeal consists of the entire district court file, including the original papers and exhibits filed in the district court, and the record of proceedings before the district court.

(B) The record of proceedings before the district court will include cassette tapes rather than transcripts unless the superior court orders the submission of transcripts. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing a transcript will be borne by the appellant.

(C) Within 40 days after filing of the notice of appeal, the clerk of the superior court shall assemble the record and prepare and distribute notice of the due date for appellant's brief. The papers in the record need not be numbered and a table of contents need not be prepared.

(2) *Power of Court to Correct or Modify Record of District Court.* If any differences arise as to whether the record on appeal truly discloses what occurred in the district court, the difference must be submitted to and settled by the superior court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, the district court, or the superior court, on motion or of its own initiative, may direct that the omission or misstatement be corrected.

(3) *Return of Record and Appellate File After Final Disposition.* Unless the court otherwise orders, the clerk shall return the record and appellate file after final disposition to the district court as provided by Rule 512(a)(2).

(b) Appeals from Administrative Agencies.

(1) *Record on Appeal.*

(A) The record on appeal consists of the original papers and exhibits filed with the administrative agency, and a typed

transcript of the record of proceedings before the agency. In an appeal from the revocation of a driver's license by the Division of Motor Vehicles, the record of proceedings will include cassettes rather than transcripts unless otherwise ordered by the court.

(B) Appellate Rule 210 shall apply except that:

(i) Appellate Rule 210(b)(1) and (2) shall not apply.

(ii) The original transcript shall be filed with the administrative agency. The agency shall forward the transcript to the clerk of the superior court within 40 days after filing of the notice of appeal.

(iii) The administrative agency shall number the pages of the agency file consecutively throughout all volumes. The agency shall forward a copy of the numbered file to the clerk of the superior court with the transcript. Physical exhibits will be retained by the agency unless specifically requested by the court. As used in this rule, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of

unusually large size or unusual bulk or weight.

(iv) In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the transcript and the court's copy of the agency file shall be borne by the appellant. The preparing agency may require advance payment of the costs as reasonably estimated by the agency.

(v) Upon receipt of the transcript and a copy of the agency file, the clerk of the superior court shall prepare and distribute notice of the due date for appellant's brief.

(2) *Return of Record and Appellate File After Final Disposition.* If a timely appeal from the superior court decision is filed and unless the court otherwise orders, the clerk shall return all physical exhibits after final disposition to the administrative agency as provided by Rule 512(a)(3). If a timely appeal is not filed, the clerk shall return all physical exhibits to the agency on the day after the time for filing an appeal expires. The appellate file

will be retained by, or returned to, the superior court.

15. Subparagraph (1) of Appellate Rule 605(a) is amended to provide:

(a) **Appeals from Administrative Agencies.** Unless the superior court orders to the contrary:

(1) the time for service and filing briefs is governed by Rule 212(a)(1);

16. Appellate Rule 608 is amended to provide:

A sentence appeal to the superior court is governed by Rule 215. That rule will in case of inconsistency prevail over Part Six of these rules, except that (1) the notice of appeal must be filed in the superior court; and (2) as provided by Rule 604, the record on appeal consists of the entire district court file, including the original papers and exhibits filed in the district court, and the electronic record of proceedings before the district court. It is only necessary to file with the court the original memorandum on appeal; no additional copies are required.

17. These amendments apply to appeals commenced on or after July 15, 1994. Appellants and cross-appellants in appeals commenced before July 15, 1994 may follow the excerpt of record procedure set out in Appellate Rule 210(c) if

(a) by following that procedure briefing in the appeal will not be delayed;

(b) the trial court appeals clerk has not yet certified the record on appeal; and

(c) the party gives immediate notice to the trial court appeals clerk and the clerk of the appellate courts of the party's intention to follow the excerpt of record procedure.

Supreme Court Order No. 1155
Effective Date: July 15, 1994
Page 38

DATED: April 20, 1994

EFFECTIVE DATE: July 15, 1994

Chief Justice Moore

Justice Rabinowitz

Justice Matthews

Justice Compton

Justice Eastaugh